

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2009CH3949
)	HUD NO.:	05-09-1195-8
KEIYA MONTICELLO,)	ALS NO.:	10-0108
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Rozanne Ronen, and Charles E. Box, upon Keiya Monticello's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CH3949; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On May 29, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that BBM Enterprises ("Landlord") failed to make a reasonable accommodation for her physical disability, mobility impairment, in violation of Section 3-102.1(C)(2) of the Illinois Human Rights Act ("Act") (Count A) and retaliated against her because she had previously filed a charge of discrimination against the Landlord with the Respondent, in violation of Section 6-101(A) of the Act (Count B). On February 8, 2010, the Respondent dismissed the Petitioner's charge for Lack Substantial Evidence. On February 10, 2010, the Petitioner filed this timely Request.
2. On July 21, 2007, the Petitioner was diagnosed with the psoriatic arthritis. This condition made it difficult for the Petitioner to climb stairs.
3. On August 8, 2008, the Petitioner's physician determined the Petitioner had a chemical sensitivity to carpeting.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On November 12, 2008, the Petitioner entered into a lease with the Landlord for a third-floor apartment. The Petitioner resided on the premises with her caregiver.
5. In January 2009, the Petitioner filed a charge of discrimination against the Landlord.
6. In March 2009, the Petitioner's caregiver told the Landlord that the Petitioner wanted to move to a non-carpeted first-floor apartment.
7. In April 2009, the Landlord offered to allow the Petitioner to move to a first-floor apartment when it became available in May 2009. This apartment was carpeted. However, the Landlord said the Petitioner could have the carpeting removed at her own expense. The Petitioner refused this offer.
8. The Petitioner requested to be released from her lease early. The Landlord denied this request.
9. In her charge, the Petitioner alleged that in April 2009 the Landlord denied her a reasonable accommodation when it denied her request to terminate her lease early. The Petitioner also alleged the Landlord denied her request to terminate her lease early in order to retaliate against her for filing a charge of discrimination in January 2009.
10. In her Request, the Petitioner states she did sign a one-year lease with the Landlord. However, she argues that pursuant to Federal Law, she should have been able to "break" her lease because a suitable apartment on the Landlord's premises was unavailable. The Petitioner states that a two-bedroom unit on the first floor did become available, but it was not suitable because it was carpeted. The Petitioner also states she asked for a first-floor unit because her previously requested accommodation of an accessible parking space had been denied.
11. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues that pursuant to the Act, the purpose of a reasonable accommodation is to permit a person the ... "equal opportunity to use and enjoy a dwelling." 775 ILCS 5/3-102.1(C)(2). The Respondent argues that early termination of the Petitioner's lease would not have permitted the Petitioner to enjoy the Landlord's dwelling, and thus was not a reasonable accommodation under the Act.
12. Further, the Respondent states that even if early termination of a lease could be interpreted as a request for a reasonable accommodation under the Act, the Respondent argues the Landlord's response to the Petitioner's request was reasonable, in that he offered to allow her to move to a first-floor apartment and allowed her to remove the carpeting. The Respondent argues, citing to Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 784 (7th Cir. 2002), that an accommodation is unreasonable if it imposes an undue financial

burden on the person or entity from whom the accommodation is sought. The Respondent argues the Petitioner presented no evidence that it would have cost her more to remove the carpeting than it would cost the Landlord to forfeit six months of rental income.

CONCLUSION

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258, *2 (Ill.Hum.Rts.Com.)

As to Count A, the Commission finds no substantial evidence to support the Petitioner's claim that the Landlord's refusal to terminate her lease early violated the Act. The Act states that housing... "rules, policies, practices, or services," should be modified when necessary to afford the disabled person the equal use and enjoyment of a dwelling. See 775 ILCS 5/3-102.1(C)(2).

However, the Petitioner did not seek an accommodation in order to afford her the equal use and enjoyment of the Landlord's premises. Rather, the Petitioner wanted to break her lease early so that she could vacate the Landlord's premises. The Commission has found no Illinois authority which states that a request for early termination of a lease so that a disabled tenant may discontinue her use and enjoyment of a dwelling constitutes a request for a reasonable accommodation pursuant to 775 ILCS 5/3-102.1(C)(2) of the Act.

Furthermore, the Landlord's offer to accommodate the Petitioner by allowing her to move to a first-floor apartment and remove the carpeting at her own expense was consistent with the Act, which states in pertinent part:

It is a civil rights violation to refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modifications, reasonable wear and tear excepted.

775 ILCS 5/3-102.1(C)(1).

Therefore, the Commission finds no substantial evidence the Landlord violated the Act as alleged in Count A.

Similarly, the Respondent properly dismissed Count B of the charge for lack of substantial evidence because there is no evidence the Landlord was retaliating against the Petitioner when it declined to terminate her lease early. The Landlord was clearly willing to reasonably accommodate the Petitioner's disabilities when it offered to allow the Petitioner to move from her third-floor apartment to a first-floor apartment, and when it offered to allow the Petitioner to remove the carpeting from the first-floor apartment.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and BBM Enterprises, as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 8th day of September 2010.

Commissioner Munir Muhammad

Commissioner Rozanne Ronen

Commissioner Charles E. Box